



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CROSBY PROPERTY MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, O, FF

Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession for unpaid rent and Monetary Order for unpaid rent and strata fines; and, authorization to retain the security deposit. The tenant did not appear at the hearing. The landlord provided a registered mail receipt as proof the hearing documents were mailed to the tenant at the rental unit on March 18, 2013.

The landlord testified that on March 6, 2013 the landlord attended the property for purposes of a unit inspection and the landlord discovered the locks had been changed by the tenant. On March 19, 2013 the landlord was notified by the building manager that the door of the rental unit was ajar and the locks removed. The landlord's agent attended the property on March 19, 2013 and discovered most of the tenant's possessions removed and the unit significantly damaged.

Residential Tenancy Policy Guideline 12 provides information with respect to service requirements. Where a landlord serves a tenant by registered mail the landlord must be prepared to show that the address used for service was the tenant's residence at the time of mailing. Based upon the evidence before me, I am satisfied the rental unit was likely the tenant's residence at the time the landlord mailed the hearing documents to the tenant. Therefore, I found the tenant sufficiently served and I proceeded to hear from the landlord without the tenant presented.

Although I find it highly likely the tenant has since abandoned the rental unit based upon the information provided to me during the hearing, the landlord requested an Order of Possession in the event that is not the case.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a Monetary Order for unpaid rent and strata fines?

Is the landlord authorized to retain the security deposit?

Background and Evidence

Pursuant to a written tenancy agreement, a co-tenancy commenced in December 2010 and the tenants paid a security deposit of \$850.00. The tenants were required to pay rent of \$1,700.00 on the 1st day of every month. In November 2012 the female tenant gave the landlord a letter indicating she wished to end the tenancy as of December 31, 2012. The landlord proceeded to communicate with the male tenant who confirmed he wished to continue with the tenancy. The landlord agreed to continue the tenancy with the male tenant under the same terms as reflected in the written tenancy agreement. Rent was paid for January 2013; however, rent for February 2013 was not received.

On February 14, 2013 the landlord sent a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) to the male tenant via regular mail and registered mail. The Notice indicates rent of \$1,700.00 was outstanding as of February 1, 2013 and has a stated effective date of February 24, 2013. The landlord provided a copy of the registered mail receipt dated February 14, 2013.

The tenant did not pay the outstanding rent and did not file to dispute the Notice. The landlord served the tenant with a Notice of Entry with an inspection date of March 6, 2013. On that date the landlord discovered the locks had been changed by the tenant and the landlord was unable to gain entry. Further attempts to contact the tenant were unsuccessful. As of March 19, 2013 it would appear the rental unit was abandoned; however, the landlord has not yet re-rented the unit due to significant damage to the unit.

By way of this application the landlord is seeking to recover unpaid rent for February 2013 and March 2013. In addition, the landlord is seeking to recover \$1,600.00 from the tenant for strata fines.

The landlord had provided copies of letters from the agent for the strata corporation dated between May 2012 and January 2013 indicating various violations with respect to parking, storage, insurance, dog registration, and other violations related to the activities of the tenants. The letters indicate a fine may be or will be imposed. I noted that I was not provided a statement of account showing the fines were actually levied against the

owner or landlord or proof of payment of the fines by the owner or the landlord. The landlord acknowledged that the fines have not been paid by the landlord or the owner.

Analysis

Under the Act a tenant is required to pay rent when due in accordance with their tenancy agreement. Where a tenant does not pay rent the landlord is at liberty to issue a 10 Day Notice to End Tenancy.

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

I accept the evidence before me that the landlord sent a 10 Day Notice to the tenant via registered mail sent February 14, 2013. As the 10 Day Notice was mailed to the tenant it is deemed to be received five days later under section 90 of the Act. Accordingly, the effective date of the Notice automatically changes to comply with the Act and reads March 1, 2013 pursuant to sections 46 and 53 of the Act.

Since the tenant did not pay the outstanding rent or dispute the Notice within five days of receiving the Notice I find the tenancy ended on March 1, 2013 and the landlord is entitled to regain possession of the rental unit. I grant the landlord's request for an Order of Possession to serve upon the tenant in the event he has not since abandoned or vacated the rental unit. The Order of Possession provided to the landlord with this decision is effective two (2) days after service upon the tenant.

Based upon the evidence before me, I find the landlord entitled to recover unpaid and/or loss of rent for the months of February 2013 and March 2013 in the sum of \$3,400.00, as requested.

A party that makes a monetary claim against another party must be prepared to show that the party making the claim has suffered a loss. I find the letters written by the strata corporation's agent insufficient on their own to demonstrate the landlord or owner has suffered a loss due to strata fines. In the absence of evidence that would demonstrate the fines have been levied against and paid by the landlord or owner I find the landlord's claims for recovery of strata fines to be pre-mature. Therefore, I dismiss this portion of the landlord's claims with leave to reapply.

I authorize the landlord to retain the security deposit in partial satisfaction of the rent owed to the landlord. I also award the landlord the filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

Unpaid Rent: February and March 2013	\$ 3,400.00
Filing fee	50.00
Less: security deposit	<u>(850.00)</u>
Monetary Order	\$ 2,600.00

The landlord must serve the Monetary Order upon the tenant and may enforce it in Provincial Court (Small Claims) as necessary.

Conclusion

The landlord has been provided an Order of Possession to serve upon the tenant if he has not yet vacated or abandoned the rental unit. The Order of Possession is effective two (2) days after service. The landlord has been authorized to retain the security deposit and has been provided a Monetary Order for the balance of \$2,600.00 to serve and enforce as necessary. The landlord's claims for recovery of strata fines has been dismissed with leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 11, 2013

Residential Tenancy Branch